REPORT TO THE RULES REVISION PROJECT STEERING COMMITTEE

FROM

THE APPEAL COURT RULES SUB-COMMITTEE

February 21, 2005

The Appeal Court Rules Sub-Committee, consisting of:

Roscoe, J.A., Chair, Fichaud, J.A., Annette Boucher, Kenneth Fiske, Q.C., John Keith, Edward Gores, John Briggs and William Laurence,

met four times since its appointment in June 2004.

The Committee reviewed Rules 62 and 65, and after considering several suggestions from members of the bench and bar, recommend the following amendments to **Rules** 62 and 65:

RULE 62

1. Rule 62.02(4) - the part requiring a copy of the letter ordering copies of tapes be sent to the Registrar should be deleted. This is no longer required as a result of the Certificate re Preparation of the Appeal Book.

2. Form 62.02(5), the Certificate Respecting Preparation of the Appeal Book, should be amended so that (i) says: "that the court appealed from has issued an order, a copy of which is attached hereto (not required in criminal appeals)".

3. Rule 62.06(c) which allows the Attorney General to intervene as a respondent in a matter of public importance, should be amended by removing the words "or without such" and adding words so that it reads "upon notice to the Court and the appellant within 20 days after the filing of the notice of appeal". The word "may" should be replaced by "shall" and after the words "notice of intention" the words "a summary of the position the Attorney General will take on the appeal", should be added.

4. Rule 62.07 - re Notice of Intention to Participate - since it only applies to Tribunal Appeals, the title should reflect that, and the Rule should be relocated to become a sub-rule of 62.03.

5. Rule 62.09 regarding Notices of Contention should be amended by deleting subsections (a) and (c).

6. A new Rule is required to clearly set out the actual practice of appearing in Chambers to obtain a date for the hearing of the appeal and the filing deadlines for the appeal book and factums, which will result in some existing Rules being amended, for example, by deleting the words in Rule 62.14, and 65.12, which indicate that the appeal book is to be filed 60 days after the notice of appeal. The new Rule could replace the existing Rule 62.19 and might be as follows:

62.19

(1) Unless otherwise provided in these Rules, the appellant shall within 60 days of filing the notice of appeal, apply to a Judge to set down the appeal for hearing by the Court and to give directions as to the appeal book and factums to be filed by the parties.

(2) The respondent may apply to set down the appeal at any time after being served with the notice of appeal.

(3) Rule 62.31 shall apply to an application made pursuant to Rule 62.19(1) or (2).

7. The consensus of the committee was that Rule 62.15 should be amended to provide that a factum should not exceed 40 pages in length, not including list of authorities and statutory excerpts, without leave of a judge.

8. Rule 62.15(3)(f) should be amended to provide that "the text of relevant statutory provisions" be set forth in an appendix to the factum.

9. The books of authorities should be filed at the same time as the factum. (Rule 62.15) Five copies should be filed, not 4, simply to avoid confusion. As well, the Rule on authorities should indicate that the authorities should be in alphabetical order and when reference is made in the factum to an authority, the tab number should be given. (see Alberta Court of Appeal Practice Directive, April 26, 2004)

10. There should be a new Rule requiring that transcripts and factums be filed, and served on the other parties, electronically (either by disc, or as an e-mail attachment) in addition to the paper copies. The Rule should indicate "...except where waived by the Registrar or a Judge", so that where the requirement would

cause undue hardship, it can be waived, in the same manner as the waiving of filing fees.

11. Rule 62.18 should be amended to provide more detail concerning applications to the court to quash or dismiss an appeal. The reference to Rule 62.30 should be removed. Instead, the Rule should provide that on two clear days notice to the appellant, the respondent may apply in Chambers to set a date for the hearing of an application to quash and for directions for the filing of an application record and written arguments. Rules 62.32 and 62.33 should be amended by adding a reference to 62.18.

12. Rule 62.30 regarding applications to the Court in relation to matters pursuant to the Supreme Court of Canada Act should be clarified.

13. Rule 62.31(7) should be amended to add the words "on application" between the words "may" and "order".

14. There should be a new Rule similar to the Federal Court Rule 369 which allows applications to the court to be made in writing only. This application process might be useful for applications to strike a notice of appeal on the basis of being frivolous and vexatious or for applications to admit new evidence on the hearing of an appeal.

15. It was agreed that there should be a new rule permitting pre-appeal case management and pre-hearing conferences by a panel. At present, although this happens occasionally on an ad hoc basis, since there is no Rule formalizing it, it could be difficult to enforce an order made using this process.

16. Rule 62.17(4) should be amended to add to the list of requirements for a perfected appeal: " (d) having the appeal set down for hearing in accordance with Rule 62.19".

17. There should be a new Rule which allows a judge to issue a transportation order requiring the keeper of a jail to bring a prisoner to court for the hearing of a civil matter.

Interlocutory Appeals

The Committee recommends the adoption of a new **Rule** dealing with Interlocutory appeals. The current Rule 62.05 should be rescinded. The new Rule 62.05 should apply only to interlocutory and interim appeals. There should also be a new separate Rule

dealing with costs appeals.

The new Interlocutory and Interim appeals Rule should include the following:

18. The notice of appeal should the in form 62.05A and shall include... continue as in present 62.05 (1) but leave out "if any".

19. Unless otherwise ordered by a Judge, an appeal book for an interlocutory appeal shall include an index, the notice of appeal, the pleadings, any affidavits and exhibits filed on the application in the court appealed from, the decision and order appealed from, the transcript of the evidence if any, and the transcript of the submissions made on the application. Rules 62.14(1), (3(c)), (3(d)) shall apply to interlocutory appeals (number of copies, and format).

20. An application to a Judge in Chambers for the dates for filing the appeal book and factums and for the hearing of the appeal shall be made within 15 days of the filing of the notice of appeal and then include balance of current 62.05(3): failing which the appeal shall be deemed dismissed unless a Judge otherwise orders.

21. A respondent on an interlocutory or interim appeal may apply to a Judge in accordance with Rule 62.31 to strike out the notice of appeal on the ground that the appeal is frivolous, vexatious or without merit.

22. Words in any other Rules which indicate "... except in an interlocutory appeal..." should be deleted.

Appeals as to Costs Only

23. As a result of rescinding the current Rule 62.05 and replacing it with a Rule which will not deal with appeals from costs orders, a new Rule and a form for a notice of appeal will be required for appeals as to costs only. The Rule should be similar to the old Rule 62.05 (1) and (3) (omit (2)) and the form should be similar to current form 62.05A.

RULE 65

1. Rule 65.07(5) should be amended by removing the words "filed and", to make it consistent with the other parts of the Rule.

2. Rules 65.12 and 65.13 - listing the requirements of appeal books for conviction appeals and sentence appeals should be combined and simplified.

3. Rule 65.16(1) should be amended to mirror the new Rule 62.19.

4. The directions now provided on the website and available from the Registrar's office as a handout describing the procedure for making an application for the appointment of counsel pursuant to s. 684 of the Criminal Code should be made into a Practice Memo.

5. The Appeal Court Practice Memo dated September 20, 1979 regarding files and exhibits from the lower court should be amended to strike out the second paragraph, in order to reflect current practice.

6. Rule 65.19(3)(a) should be rescinded.

Respectfully submitted,

Justice Elizabeth Roscoe